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November 18, 2002

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OUR FILE No. 21279-00100

NOV 18 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Vistronix, Inc.
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002


RE: File No. MB Docket No. 02-291
RM-10528
FM Broadcast Stations, Arthur, NE

Dear Ms. Dortch:

Transmitted herewith, on behalf of Arthur Radio Broadcasting, are an original and four copies of the **COMMENTS OF ARTHUR RADIO BROADCASTING**, in response to the Commission's Notice of Proposed Rulemaking regarding the allocation of Channel 300C1 to Arthur, Nebraska.

Should further information be necessary regarding this submission, kindly communicate directly with this office.

Sincerely,


John M. Pelkey 2

Enclosures

JMP/sdt

DC_DOCS.600799.1

No. 21279-00100-014
List A (10/02)

please reply to JOHN M PELKEY jpelkey@gsblaw.com TEL EXT 2528

Before The
Federal Communications Commission
Washington, D.C. 20554

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In re Amendment of

Section 73.202(b)

Table of Allotments

FM Broadcast Stations

Arthur, NE

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File No. MB Docket No. 02-291

RM-10528

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division

Comments of Arthur Radio Broadcasting

By Petition for Rule Making filed June 24, 2002, Arthur Radio Broadcasting (referred to herein as "ARB") requested that the Commission institute a rule making proceeding to amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, by allotting Channel 300C1 to Arthur, Nebraska, as that community's first broadcast channel. In response, the Commission released a Notice of Proposed Rule Making ("*NPRM*") in the above-captioned proceeding, proposing the requested change to the Table of Allotments and soliciting the submission of comments by November 18, 2002.¹ ARB, through counsel, hereby submits its comments in response to the *NPRM*. As will be shown below, the proposed rule making is consistent with Commission policy and would advance *the* public ~~interest~~. Accordingly, the proposed rule making should be adopted.

¹ See *NPRM*, MB Docket No. 02-291 (RM-10528), **DA** 02-2320 (adopted September 11, 2002, released September 27, 2002).

I. Arthur is a Community in Need of Broadcast Service.

In its Petition for Rule Making, which is hereby incorporated by reference, ARB requested that the Table of Allotments be amended to allocate Channel 300C1 to Arthur, Nebraska, so as to permit the provision of that community's first local aural transmission service. Arthur, Nebraska, is an incorporated community with a population of 145 persons according to the 2000 U.S. census. Arthur is governed by the five-member Arthur Village Board. It has its own post office with its own **zip** code, 69121. It is also the county seat of Arthur County, Nebraska, which has a population of **444** persons. The Arthur County Clerk and the Arthur County Sheriff both maintain their offices in the village of Arthur and Arthur hosts both the Arthur County Court and the State of Nebraska's 13th District Court. Arthur also boasts its own newspaper, *The Arthur Enterprise*, and is home to Arthur County High School. Arthur is the home of two significant tourist attractions, the Courthouse Museum and the Haybale Church. Despite Arthur's status, however, no broadcast facilities of any type are allocated to the community. Allocation of Channel 300C1 would remedy this deficiency.

II. Allocation of Channel 300C1 to Arthur would Well Serve the Commission's Allocations Priorities and thus would be in the Public Interest, while Fully Abiding with the Commission's Technical Requirements.

In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096

(1990), the Commission held that provision of first local service is the highest of the allotment priorities which remains in any significant degree unsatisfied.² The allocation to Arthur would permit Arthur to receive its first local aural channel, thus serving this highest of allotment priorities.

In addition, as was indicated in the NPRM, Channel 300C1 can be allotted to Arthur consistent with the minimum distance separation requirements of the Commission's rules if a site restriction of 8 kilometers northwest is imposed to avoid the vacant allotment for Channel 297C1 at Hershey, Nebraska.' The requisite principal community coverage of Arthur would be achieved from those coordinates.

III. ARB Reaffirms its Commitment to Apply for the Requested Facilities and Construct those Facilities Promptly.

In its Petition for Rule Making, ARB committed that, if the proposed amendment to the Table of Allotments were adopted, it would promptly apply for an authorization to construct the new facilities and, if it were awarded the construction permit, to construct the new facilities promptly.' ARB hereby reaffirms that earlier commitment and, in accordance with paragraph 2 of the Appendix to the *NPRM*, specifically states its intention to apply for Channel 300C1 if that channel is allocated to

² As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC2d 88.91 (1982).

The proposed reference coordinates are 41-37-10 NL; 101-45-57 WL

⁴ *Petition for Rule Making* at 3.

Arthur, and, if authorized, to promptly construct the new facilities, place the facilities in operation, and seek a license covering the construction of the facilities.

IV. Conclusion

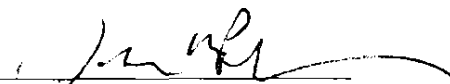
The above facts demonstrate that the Commission's allocation criteria would be well served by the allocation of Channel 300C1 to Arthur, Nebraska, as such allocation would provide that community with its first local broadcast transmission service of any type. Inasmuch as the allocation to Arthur complies with all separations requirements and would allow city grade coverage of all of Arthur, the proposal is consistent in all respects with the Commission's rules.

Accordingly, ARB respectfully requests that the Table of FM Allotments be amended as follows:

Community	Present Allotment	Proposed Allotment
Arthur, Nebraska	- -	300C1

Respectfully submitted,

Arthur Radio Broadcasting

By: 
John M. Pelkey
Its Attorney

Garvey Schubert Barer
5th Floor, 1000 Potomac Street, N.W.
Washington, DC 20007


2021965-7880

Date: November 18, 2002

CERTIFICATE OF SERVICE

I, Susan Testa, a secretary in the law offices of Garvey Schubert Barer, hereby certify that I have on this 18th day of November, 2002, sent copies of the enclosed **“COMMENTS OF ARTHUR RADIO BROADCASTING”** by hand-delivery to the following:

Sharon P. McDonald
Federal Communications Commission
Media Bureau
445 Twelfth Street, SW, Room 3-A320
Washington, DC 20554



Susan Testa